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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947.

No. 397.

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS' UNION, et al., APPELLANTS,

v.

DENVER MILK PRODUCERS, INC., HAROLD HENNIGH, E. W. JOHNSON, et al., APPELLEES.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF COLORADO.

REPLY BRIEF OF APPELLEES.

STATEMENT.

In reply we wish again to point out that the Colorado Supreme Court in its exhaustive opinion has detailed the history of this litigation and has found the controlling facts to be contrary to the general statement contained in appellants' brief. It is necessary, therefore, to challenge some of the assertions of fact, as well as the inferences therefrom made by appellants in their statement of the case. For example, appellants seek strenuously to have this Court be-

lieve that the acts of the Union which were enjoined by the Colorado Supreme Court were entirely and essentially peaceful in character; that such acts were devoted solely to the purpose of publicizing facts in a labor dispute. As pointed out in our opening brief, this is far from being the case. The State Supreme Court found that the Union acts there complained of were enjoinable, not only because they were a part of a conspiracy to attain unlawful ends, but they also constituted intimidation and coercion intermingled with a "contexture of violence." The court found that the purpose was to coerce the employers to execute an all-union agreement (R. 274-294). This is not the forum to resolve conflicts as to facts or their interpretation. We submit that such was the province of the Supreme Court of Colorado:

> "It is not for us [referring to this Honorable Court] to make an independent valuation of the testimony before the Master. We have not only his findings but his findings authenticated by the state of Illinois speaking through her supreme court. We can reject such a determination only if we can say that it is so without warrant as to be a palpable evasion of the constitutional guaranty here invoked. The place to resolve conflicts in the testimony and in its interpretation was in the Illinois courts and not here. To substitute our judgment for that of the state court is to transcend the limits of our authority."
>
> Milk Wagon Drivers v. Meadowmoor Dairies, 312 U. S. 287, 85 L. ed. 836 at page 841.

Its opinion indicates clearly that the character of the acts of the Union agents was illegal and coercive, not peaceful and persuasive.

Counsel also claim on page 7 of their statement that the Unions viewed the continued distribution and processing of milk under non-union conditions as a threat to union standards. There is absolutely no evidence that this was the case. Among other things, counsel would have the Court believe that wages in the non-union plants were lower than in union plants. On the contrary, the record shows that the standards were higher than union standards. That wages could be lowered by the employer was one of the arguments used

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by Coffey, an organizer, in seeking to convince Beach that he should execute the all-union agreement. To quote from the testimony applicable:

> "• • • that if I [Beach] was going to sign the contract it would be dated ahead, say, October 1st, and during that period of time he [Coffey] suggested I lower my wages to union scale. I told him that I thought that was a very unfair thing to the employees. That was so I would have a union scale at the time my contract went into effect if I signed one." (R. 109)

To the same effect are other statements set forth on pages 8 and 9 of appellants' brief concerning the maintenance of union standards and like matters. Again there is no evidence to sustain this. On page 11 the statement that the farmer-producer alleges that the conduct of the appellants injured him in that it interfered with his freedom of choice as between union and non-union carriers is not correct. The correct statement was that it compelled the farmer-producer as an individual to join the Union in order to market *his own* milk (R. 6 and 7).

However, as we view it, since the opinion of the Supreme Court of Colorado contains the authenticated history of the controversy and the facts and inferences found to be true by that court, we rest upon it.

ARGUMENT.

I.

FREE SPEECH HAS NOT BEEN DENIED.

We turn now to the specific points urged by appellants for reversal of this cause upon the bases urged under their argument I, which we group generally under the above caption for convenience in replying.

It is at once apparent by their specifications of errors that counsel have assumed facts not warranted by the evidence and have misconstrued the decision of the State Supreme Court. They seek to have this court believe that all of the Union acts were entirely peaceful in character and, being so, the state is wholly without power to regulate.

To put it another way what they assert is that under no circumstances can peaceful picketing be enjoined where a labor union is involved, regardless of the motives, means, methods or objectives and regardless of the effect on domestic tranquillity and economy. In other words, a labor union, according to their argument, has carte blanche, wherever it seeks to organize non-union plants or industries. They also assert in effect that no state can empower any court to enjoin union activities even though illegal. The mere statement of such a proposition is its own refutation.

It is also obvious that counsel have misconstrued the holding of the Colorado Supreme Court and have not interpreted correctly the order of injunction. Specifically, the court held that the power to enjoin existed where such power had not been restricted or stripped from the courts by statute. It also held that there was no vested interest in a defense that had previously existed, that what the legislature had taken away it could, by that token, restore it; therefore, the Colorado Labor Peace Act was constitutional as being within the limits of state control and being within such limits the court found the union activities required restraint. Such legislation, as pointed out in our opening brief, has been approved by practically every state court having occasion to pass upon the question, and by this Court.

It is well to examine the opinion of the State Court on this phase of the matter. The injunction order adopted by it restrained the appellants in substance from doing the following:

> "(a) Establishing and maintaining a secondary boycott on Piggly Wiggly stores;
>
> "(b) Placing pickets around said stores;
>
> "(c) Publishing that the sale of Beach Milk products by said stores was unfair to labor;
>
> "(d) From preventing or interfering with the delivery of the Beach products to said stores; and
>
> "(e) From refusing to handle and sell said products as members of the Retail Clerk's Union." (R. 288)

It must be borne in mind also that this controversy must stand on the Beach case, because it was expressly stipulated by counsel that the facts therein, if enjoinable, ex-

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tended to and applied to the other cases. Inasmuch as counsel stipulated to this in the court below, they cannot challenge it now (R. 294). Furthermore, as the State Supreme Court found:

> "It would unnecessarily lengthen this opinion to quote all the facts contained in the findings of the trial court pertaining to the other cases, in view of the stipulation of counsel that the facts are sufficiently similar to justify the issuance of the temporary restraining order in each of the cases, and especially in view of the following statements of the trial court in its findings:
>
> "'These cases were argued and submitted together and may be disposed of in a single opinion because the law involved governs the general factual situation existing in all of the cases.
>
> • • •
>
> "'The situation existing in each case may be gathered from the foregoing general statement of facts. Of [fol. 418] course, some of the facts overlap in the various cases, while other facts are pertinent only to a particular case. However, in general the situation must be viewed as constituting one controversy.'" (R. 294)

But counsel, under subdivision I of their brief, upon the single assumption that so-called peaceful picketing was enjoined, say that their clients have been denied their constitutional rights of free speech. They assert baldly that

> "The Fourteenth Amendment precludes the states from imposing restraints upon peaceful picketing by persons who are interested in a dispute concerning unionization."

We vigorously challenge this assertion.

This is not the law. Even peaceful picketing may be restrained where necessary in the public interest. But in any event the picketing in this case, being for an unlawful purpose cannot be characterized as that type of peaceful picketing that counsel say is immune.

Counsel assert that our Supreme Court was "led into

error by assuming that if a controversy does not come within the scope of state legislation limiting the issuance of injunctions, efforts to make known one side of an industrial controversy by peaceful means may be enjoined."

Such is not the decision of the Colorado Supreme Court. On the contrary, the Colorado Supreme Court correctly decided that the legislation passed by Colorado was constitutional, in effect, because it was a reasonable regulation and provided adequate machinery for minimizing labor disputes in the public interest; at the same time it encouraged unionization and provided for the attainment of the labor objectives under the machinery therein set forth.

The union may proselyte. It may solicit. It may hold public demonstrations. It may, under Section 5 of the Colorado Labor Peace Act, if it has even so much as one member among the employees, request an election to determine the bargaining unit, and may become such bargaining unit, if it has the vote of the majority of the employees. It may advance in a score of ways its plans to unionize an entire industry, and we know that it does do so. But when it puts a picket line around business premises with banners carrying legend denouncing the employer as unfair to labor, pursuant to a threat to do so unless the employer sign an unlawful closed union contract, engages in secondary boycott, threatens the same and does other illegal acts to further such execution, it cannot successfully assert that the state is without power to restore to the courts their traditional equity powers to prevent such illegal activities. This is to say that the Unions are above the law. As Mr. Justice Frankfurter said in United States v. United Mine Workers, 91 L. ed. 595 at 622:

> "The historic phrase 'a government of laws and not of men' epitomizes the distinguishing character of our political society. • • • 'A government of laws and not of men' was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. • • •
>
> "But from their own experience and their deep

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> reading in history, the Founders knew that Law alone saves a society from being rent by internecine strife or ruled by mere brute power however disguised. 'Civilization involves subjection of force to reason, and the agency of this subjection is law.' "

So we say that the Colorado Labor Peace Act, as interpreted by our court, is our answer to untrammeled private power, whether union or employer.

Even now, the appellants can attain the ends they seek to attain by the legal means provided in the Act.

It has not been too recent when this country as a whole has seen the possibility of its entire economy strangled by threatened strikes (the threatened railroad strike, and the coal miners' incident). It cannot be controverted by any one that those situations became so serious that they threatened the very foundations of government. Abuses on the part of irresponsible labor leaders can no more be tolerated than abuses brought about by irresponsible capitalists. We submit that now it is generally recognized that regulation of labor-management affairs must be undertaken, not only by Congress, but by the respective states to protect the interests of the public. The maxim, *salus populi suprema lex,* is the justification for such regulation. It is now well settled that industries affected with the public interest can be regulated as to rates, working conditions, safety laws, and the like. It is not too much to say that an industry centering around the production and distribution of milk is vitally affected with a public interest, and on this ground alone the legislature of the State of Colorado has the right to regulate labor-management disputes so as to correct evils and to preserve the rights and interests of the consuming public as well as the legitimate rights of the contending parties.

The test, we submit, is not whether the so-called peaceful picketing is banned, but rather whether the statute in this field is a reasonable exercise of the power of the state to legislate in such a matter of great public interest. We submit that the Meadowmoor case, supra, and Carpenters and Joiners Union v. Ritters Cafe, 315 U. S. 722, 62 S. Ct. 807, 86 L. ed. 1143, as well as Swenson v. Seattle, 177 Pac. (2d) 873, quoted with approval by our own Supreme Court, and the

other cases in our opening brief, as well as fundamental justice, are the guideposts by which it must be said that the Colorado legislation here involved is within the Federal constitutional limits as being such "reasonable regulation."

We believe that our own Supreme Court on this point has well stated the proposition in the instant case, where it said:

> "In the course of the opinion in the United Mine Workers case, in speaking of the effect the Norris-LaGuardia act had on the Clayton Act, it was pointed out that it had held in a former case 'that the Norris-LaGuardia act "still further * * * (narrowed) the circumstances under which the federal courts could grant injunctions in labor disputes".' Under the circumstances, no one could seriously contend that the Clayton act was unconstitutional or invalid because it was more liberal than the Norris-LaGuardia act or that the latter was invalid and unconstitutional because it was narrower than the former" (R. 299.)

Thus, the fact that our present legislation narrowed the cases in which no injunction could issue, in other words established a defense in such cases, as compared with our own Little LaGuardia Act (S. L. 1933, page 404, et seq., C. S. A. 1935, Chap. 97, sections 76 to 87) formerly in effect, is not reason for invalidating the present act.

The rule that there is no vested interest in a defense is set forth fully in the opinion of the Colorado Court (R. 295-296) is recognized in the Lewis decision and is supported by clear and convincing authorities.

This Honorable Court, in deciding that Congress had power to establish an Emergency Court of Appeals, said:

> "The Congressional power to ordain and establish inferior courts includes the power 'of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.' "
>
> Lockerty v. Phillips, 319 U. S. 182, 87 L. ed. 1339.

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In Chicago, etc. v. Cole, 251 U. S. 54, 40 S. Ct. Rep. 68, 64 L. ed. 133, this Court, speaking through Mr. Justice Holmes in upholding a state statute abolishing contributory negligence as a defense, said at page 134:

> "The argument that the railroad company had a vested right to that defense is disposed of by the decisions that it may be taken away altogether [Citing cases]".

Having restored the power to issue injunctions to our courts, except in the limited class of cases, it does not follow that injunctions issue as a matter of course. Nor did such happen here, but under equitable principles our court held that, there being no defense absolute, the case as made on the pleadings and the facts required the issue of the order to prevent irreparable injury. No one's constitutional rights were infringed.

Upon the grounds, therefore, that the legislation is regulatory in nature, and that no vested interest can be acquired in a defense, the decision of the State Court was and is prefectly proper.

It is apparent that all through appellants' brief their unvarying theme is, that where unionization is involved, no matter how it arises, and whether or not the workers sought to be unionized are willing; nevertheless the right to insist upon unionization is a paramount right transcending all others. The mere statement of such a proposition demonstrates its fallacy. Under the law, the employers, union employees, union organizers and non-union employees, we submit, have equal rights. This principle is recognized in the Colorado legislation. Where there are two stubborn contending forces, each with equal rights under the law, there is no question but that regulation is required in the public interest, because, as we have seen, without such regulation industrial warfare ensues to the great injury of the public. This, under the stress and circumstances of this era, can no longer be tolerated.

As stated by this Honorable Court:

> "But the circumstance that a labor dispute is the

> occasion of exercising freedom of expression does not give that freedom any greater constitutional sanction or render it completely inviolable. Where, as here, claims on behalf of free speech are met with claims on behalf of the authority of the state to impose reasonable regulations for the protection of the community as a whole, the duty of this Court is plain. Whenever state action is challenged as a denial of 'liberty,' the question always is whether the state has violated 'the essential attribues of that liberty.'"
>
> Carpenters & Joiners Union v. Ritter's Cafe, supra, at page 1146, 86 L. ed.

Appellants rest their contention as to the "free speech" phase of their case, upon Cafeteria Employees Union v. Angelos, 320 U. S. 293; Bakery & Pastry Drivers, etc. v. Wohl, 315 U. S. 769; and American Federation of Labor v. Swing, 312 U. S. 321.

These cases, if applicable, go no farther in our opinion than to say that the mere absence of the employer-employee relationship did not *per se* justify an injunction against peaceful or lawful picketing. As we have pointed out in our opening brief, the case here before this Court is not one of peaceful picketing standing alone, but the picketing actually involved is one of several tortious acts engaged in as the result of a conspiracy on the part of the Unions to attain an unlawful end, and since the power existed to enjoin by statute, such acts were enjoinable as part of the concerted plan and scheme. Even in the Wohl case, this Court said at page 1184 of 86 L. ed.:

> "A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual."

In an effort to fortify their case on this phase, counsel, commencing at page 26 of their brief, say that unionization is a matter of public concern, and that no state can constitutionally withdraw from the public the right to be informed.

Unionization may well be a matter of public concern. As pointed out before, not only the several states, but Con-

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gress as well, has found it necessary to legislate *in the public interest* so as to minimize and confine the area of industrial disputes to lessen the impact on the public.

The argument has no application whatever to the facts. Colorado neither by legislation, nor by judicial fiat, deprived appellants of such rights.

To quote but two of the applicable provisions of the Colorado Act:

> "*Section 7. What are not unfair Labor Practices.* • • •
>
> "(2) The right of both employer and employee freely to express, declare and publish their respective views and proposals concerning any labor relationship shall not be abrogated or limited by this act, nor shall the exercise of such right constitute an unfair labor practice."
>
> "*Section 24. Construction of this Act*—Except as specifically provided in this act, nothing herein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this act be so construed as unlawfully to invade the right to freedom of speech."

There is nothing in the restraining order (R. 288) to warrant even an inference that such was done. Counsel try to stretch the prohibition against picketing as a denial of the right of publicizing. The giving of information to the public was not in the Union leaders' thoughts.

Exactly as the Washington Supreme Court and our own court held:

> "*The purpose of the picketing was to force the employer to deal with the picketing unions in defiance of this order, under the threat that, should he refuse to do so, his plant would be closed and his equipment prevented from being installed any place in the United States. This was coercion*" (R. 305).
>
> Swenson v. Seattle, 177 Pac. (2d) 873, ... Wash .....

The objective was to cause the execution of the all-union agreement by fair means or foul, and now to claim that the pickets involved at the Beach plant were there for the purpose of informing the public of the facts of a labor dispute is but a threadbare cloak, easily transparent. On this branch of the case appellants rely on the Thornhill case, 310 U. S. 88. The Thornhill case, along with the Carlson case (also relied upon by appellants), is distinguished by this Court in the Meadowmoor case (312 U. S. 287, 85 L. ed. 836), where this Court said (at page 843, L. ed.):

> "They [referring to the two cases] involved statutes baldly forbidding all picketing near an employer's place of business."

Such is not the Colorado statute.

As held by our Supreme Court and as we have shown in our opening brief, and reiterate here, the picketing involved in this case was part and parcel of an oppressive and coercive plan and as such not protected by any constitutional prohibition.

Much of the appellants' argument under subdivision I B, to the effect that "Unionization is of concern to those engaged in the same industry" has already been answered. This is but another way of stating that where unionization is involved there can be no restraint.

However, there was practically no effort made to solicit the milk drivers individually. It is true there were a few instances of it, but in the main the plan adopted and, which but for the intervention of the court, would have been carried out, was to force the execution of the all-union agreements by the employers. There was no attempt made to inform either the industry or the public as a bona fide proposition of facts tending to convince the same of the advantages to accrue from complete unionization. There was no complaint made about hours, wages or working conditions in the non-union plants. As a matter of fact the record shows conditions and wages were better in the non-union plants. To state that the purpose of the pickets around the Piggly-Wiggly Stores and the processing plants was for

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the purpose of solicitation is, to put it mildly, a distortion of the record and savors of an attempt at self-justification.

The real purpose was arrogantly expressed by one of the Union organizers to Laws, one of the Piggly-Wiggly managers:

> "Well, we will just have to throw a picket line around the store and none of the union drivers would cross the picket line, whether they were milk, bread-drivers, or what" (R. 59).

This certainly does not have the attributes of solicitation, information and persuasion, but has all the earmarks of a military picket line to prevent passage. It was an illegal attempt to include neutrals in the area of dispute.

The cases cited by counsel do not apply on this proposition. Nor do they deny the right reserved to the states to regulate, in the public interest, such matters.

The analogy to the declared boycott by Cardinal Dougherty of the theaters in Philadelphia for showing moving pictures claimed to be objectionable is far fetched. It is obvious that the circumstances are not in any respect comparable. Where the means used, or the end to be attained, by the union are unlawful, they may be restrained from committing tortious acts, including the publication of "unfairness", as was warranted in the case at bar.

As we have seen, both by authority and reason, all of the rights claimed by the Unions must, where necessary in the public interest, be subservient to the public good and are subject to reasonable regulation by the several states as well as the United States.

> Carpenters & Joiners Union v. Ritter's Cafe, supra.

Even the McAdory case (Alabama State Federation v. McAdory, 18 So. (2d) 810) relied upon by appellants affirms the doctrine herein asserted by us (page 817):

> "The validity of the Act and its several provisions rests upon the question of whether or not the State, through its lawmaking body, was within the proper exercise of its police power.

> "As we have often observed, the exercise of this power is a governmental function, and is of such a character that it cannot be alienated or surrendered by the legislature. The limits of a state's police power have never been fixed nor its boundaries defined. This for the reason that it is not subject to any definite limitatons or boundaries, for it represents the state's great reserve power, and at all times is co-extensive with the necessity of the case and the safeguard of public interest. It is a power inherent in the government, and while it may be set aside by the Constitution, yet in order to find that it has been so set aside, the Constitution must plainly so indicate."

We submite that appellants have not been denied, or deprived, of any constitutional rights.

II.

INVOLUNTARY SERVITUDE IS AND WAS NOT IMPOSED.

In subdivision II of their brief, counsel argue strenuously and at length that the injunction in this case compels involuntary servitude.

This contention is not new. However, their assertion does not fit the facts. What they really seek to do by this contention is to evade the effect of the order against the secondary boycott. No one is compelled to labor for another within the meaning of the Thirteenth Amendment. An examination of the order is sufficient to demonstrate this (R. 288).

By referring to the restraining order under (e) thereof, it will be readily seen that this is merely ancillary to the prohibition against the secondary boycott of the Piggly-Wggly Stores as it only professes to order: "From refusing to handle said products [Beach's] as members of the Retail Clerk's Union" (R. 288).

There is a wide difference between the right of an individual to refuse to work and the right of a union to order or to compel others to refuse to work.

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The interpretation of the meaning of the language of the Thirteenth Amendment as imposing a restraint upon involuntary servitude is well established by judicial construction. Such interpretation has been had in labor cases.

> "'Involuntary servitude' as used in this amendment means the condition of one who is compelled by force, coercion, or imprisonment, and against his will to labor for another whether he is paid or not."
> Crews v. Lundquist, 197 N. E. 768, 361 Ill. 193.

The Circuit Court of Appeals for the Seventh Circuit has on two different occasions decided between the same parties (International v. Western Union, 6 Fed. (2d) 444, 46 A. L. R. 1538 and note at 1541; and International v. Western Union, 46 Fed. (2d) 736) that:

> "Involuntary servitude is not unconstitutionally imposed upon members of a labor union by enjoining them from striking and threatening to strike, and from injuring the cables and other property of a telegraph company, because it is installing with non-union labor, upon property where the union men are at work, call boxes for use in summoning messengers for the convenience of occupants of the buildings."

However, in the last analysis the final and conclusive authority on this phase is the Lewis case (United States v. United Mine Workers, 91 L. ed. 595), in which the Union asserted:

> "'5. The Temporary Restraining Order is beyond the jurisdiction of this Honorable Court and therefore void because it contravenes the First, Fifth, and Thirteenth Amendments to the Constitution of the United States'" (Page 601).

In answer to such contention this Court said at page 622:

> "*We have examined the other contentions advanced by the defendants but have found them to be without merit.*"

Much reliance on this phase of the case has been placed by appellants on the McAdory case, supra. In this case

a criminal statute of Alabama laid heavy penalties upon a single workman who refused to handle any material because it was not processed by union labor.

This case is distinguishable on two grounds: First, the statutes of the respective states are not similar and so pointed out in the opinion itself; secondly, the Alabama Act was aimed at an individual and had no reference to conspiracy, or coercion, or malicious intent, as the court said:

> "Counsel for defendants lay some stress upon A. F. of L. v. Reilly, the Colorado case cited above, defining a secondary boycott. But there is little similarity between the Colorado statute and Section 12 of the Bradford Act. • • •
>
> "This Section 12 makes no reference to a conspiracy or to the confederated action of two or more persons. Nor does it have reference to any intention of injury to another. The individual workman may be acting in entire good faith and in obedience to a rule of his local union, or he may be acting in entire good faith in what he considers to the best interests of the union to which he belongs, and to labor unions in general. His conduct may be in the nature of an individual protest against the use by his employer of material not processed by members of a labor union. But all of this is entirely lawful. He is acting within his rights, but without coercion and without confederation, and without malicious intent.
>
> "The authorities are to the effect that a labor union may, so long as its action is not directed against a particular individual, refuse to permit its members to work on material produced or transported by non-union labor, and that a strike called to compel the handling of union material is not unlawful. • • •
>
> "It is to be noted that this section does not deal with the right to strike for non-union material. *It deals solely with individual protest of the individual workman.* We are inclined to the view that it is simply a refusal to perform a contract for personal service, which is under this section made a crime, and that it infringes closely upon the Thir-

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teenth Amendment to the Federal Constitution prohibiting involuntary servitude of any character" (Pages 825 and 826).

To conclude, we submit that neither our statutes nor the order of our Court enforced involuntary servitude, and appellants' contentions are wholly "without merit."

III.

A STATE MAY CONSTITUTIONALLY BAN THE "SECONDARY BOYCOTT."

Counsel under subdivision III of their brief assert in effect that the secondary boycott cannot be banned.

The decision of the Colorado Supreme Court was unanimous on this point that such could be done.

However, Appellants rely upon Goldfinger v. Feintuch, 276 N. Y. 281, 11 N. E. (2d) 910, as sustaining their position. This is the only decision in which the doctrine of so-called "unity of interest" has been applied to justify "a secondary boycott." The "unity of interest" was derived from the fact that by reason of a lower wage scale, the manufacturer was able to sell his product to the retailer at a lower price and the retailer enjoyed this economic advantage in competition with others—a circumstance conspicuously absent in the present case. Milk was but a small part of the groceries and food products sold by the Piggly-Wiggly Stores, it is not too much to say, and indeed is borne out by the record as stated in Laws' testimony (R. 59), that there would have been no deliveries to the Piggly-Wiggly Stores of any commodities. In other words, the picket line would have blocked passage.

In addition to the authority contained in our main brief to sustain the lawfulness of the Colorado legislation and the action of the court in banning the secondary boycotts actually carried out and attempted in this case, we also direct this Court's attention to Rogers v. Poteet, —— Mo. ——, 199 S. W. (2d) 378, decided February 10, 1947 (certiorari denied 67 S. Ct. 32, 91 L. ed. 1394, June 16, 1947), quoting from page 390:

> "And the right to boycott for coercive purposes is not one of those fundamental rights, so far as we are aware. • • •
>
> *"This history shows the question of boycotts in aid of labor conspiracies has always been regarded as statutory."*

In the Missouri case just cited the very union involved in this matter sought to unionize all producers, haulers and processors of milk in the area around Kansas City, Missouri, much like the objective sought in the instant case, and the Missouri Supreme Court, in speaking of Section 17 of the Clayton Act, said at page 392:

> "It was to protect the weak against the strong. Now the conditions are reversed. Labor organizations have acquired overpowering strength. The Union in this case is sponsored not only by a national but an international union.
>
> "It proposes to invade an extensive rural area and coerce the contract milk haulers into its membership or destroy their business by rejecting the milk they deliver to the processing plants."

The facts in the instant case show clearly that the object of the secondary boycotts was clearly coercive in nature, therefore illegal and not entitled to any constitutional protection.

CONCLUSION.

There is no sinister group in power in Colorado that is anti-labor, as counsel by their conclusion would have this Court believe. It is not true, as they assert, that Colorado has declared it to be unlawful for laboring men peacefully and truthfully to discuss unionization, but on the contrary the legislation involved is an enlightened code passed by the Colorado legislature to protect the legitimate rights of all. Ample provision is made for the organization of laboring men into collective bargaining units. The public is protected from the evils that flow from industrial warfare. It is also recognized that the right to refrain from joining a union is as important as the right to join. In this connection it is well to point out that under the Taft-Hartley Act

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(29 U. S. C. A. Section 141 *et seq.)* the public policy of the United States is now directed to the necessity of regulating affairs in the labor-management field. To quote from Section 141(b), in which Congressional declaration of purpose and policy is set out:

> "It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations * * * to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

Furthermore, this very Act has restored to the Federal courts the power to issue injunctions in this class of cases (29 U. S. C. A., section 160(j)). The functions of the National Labor Relations Board are not unlike the Colorado Industrial Commission (Sec. 5 C. L. P. A., see App. 1), because comprehensive machinery is set up therein to safeguard "the legitimate rights" of the public, employer and employee.

We submit that the legislature of Colorado as well as the Congress of the United States has set forth a clear and definite policy to the effect that labor-management affairs must be regulated in the public interest. Such legislation is lawful and constitutional and should be sustained.

Respectfully submitted,

KENNETH W. ROBINSON,
606 Ernest and Cranmer Bldg.,
Denver 2, Colorado.
Counsel for Appellees.

APPENDIX 1.

Section 5. *Representatives and Elections.*

(1) A unit chosen for the purpose of collective bargaining shall be the exclusive representative of all of the employees in such unit, provided; the majority of the employees of one employer, or the majority of the employees of one employer in a craft, vote at such election, and provided further that employees individually shall have the right at any time to present grievances to their employer in person or through representatives of their own free choosing, and the employer shall confer with them in relation thereto.

(2) Whenever a question arises concerning the selection of a collective bargaining unit, as defined in Section 2 (6), it shall be determined by secret ballot, and the Commission, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employees in any craft, division, department or plant as to the selection of the collective bargaining unit.

(3) Whenever a question arises concerning the selection of a collective bargaining unit, the Commission shall determine the question thereof by takng a secret ballot of employees and certifying in writing the results thereof to the bargaining units involved and to their employer or employers. There shall be included on any ballot for the selection of a bargaining unit the names or suitable description of each bargaining unit submitted to the Commission and claimed to be the appropriate unit by an employee or group of employees participating in the election, except that the Commission may, in its discretion, exclude from the ballot any bargaining unit which at the time of the election, stands deprived of its rights under this act by reason of a prior adjudication of its having engaged in an unfair labor practice. The ballot shall be so prepared as to permit of a vote against representation by any unit named on the ballot. The Commission's certification of the results of any election shall be conclusive as to the findings included therein, unless reviewed in the same manner as provided by sub-

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sections 5 and 8 of Section 8 for review of orders of the Commission.

(4) Questions concerning the selection of collective bargaining units may be raised by petition of any employee or his employer or the representative of either of them. Where it appears by the petition that any emergency exists requiring prompt action, the Commission shall act upon said petition forthwith and hold the election requested within such time as will meet the requirements of the emergency presented. The fact that one election has been held shall not prevent the holding of another election among the same group of employees, provided that it appears to the Commission that sufficient reason therefor exists.

(5) The Commission shall investigate and determine what persons shall be qualified and entitled to vote at any election held by it and shall prepare and certify a poll list of such qualified voters and shall file the same in the office of the Commission not later than twenty-four hours preceeding the time of such balloting and not earlier than forty-eight hours preceding the same, which said list shall be available to the collective bargaining units whose interests are involved in the election. On request of any employee said list shall be prepared so as to show separately what employees are entitled to vote for general representation of the employees and what employees are entitled to vote separately for craft representation or representation of any one of several plants of a common employer. No person whose name is not so certified shall be entitled to vote at such election. The Commission shall protect the secrecy of the ballot and shall take all proper measures for the accurate counting thereof and shall certify the result thereof and immediately file such certificate in its records and make the same available for the inspection of any persons interested. The bargaining unit or units so elected and certified shall be the respective representatives of the employees so electing them, and recognized as such under this act. The names of all persons voting at the election for the selection of a bargaining unit shall be certified to the Commission and filed in their records, and shall constitute the voting

roll for said bargaining unit for all purposes under this act, and the name of any person leaving such employment shall be removed from the roll, provided, however, that any employee whose name appears on said voting roll so determined, may have his name withdrawn from said roll by notice in writing to the Commission.